

Section XIII

Responsibility 10b: Licensure of Post-
secondary Institutions

XIII. Establishing Licensing Procedures and Standards for Post-Secondary Institutions

A. Background

1. Introduction

As stated in the previous two chapters, the post-secondary functions related to licensing procedures and standards include accreditation of teacher education programs at local post-secondary institutions (discussed in chapter XI) and licensing of private, post-secondary institutions.

Through the State Education Office's research and review of the legislative intent, it has been determined that the licensing of private, post-secondary institutions is a critical issue of study. The Education Licensure Commission (ELC) is currently responsible to the Mayor for this important function of assuring the quality of private, post-secondary education in the District of Columbia. Generally, this assurance is provided through establishing the requirements for licensing of degree-granting institutions and non-degree schools, and regulating compliance with these rules. The Commission provides for the protection, education, and welfare of the citizens of the District

- by establishing standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive, or fraudulent institutions and practices;
- by prohibiting the granting of false or misleading educational credentials;
- by regulating the use of academic terminology in naming or otherwise designating educational institutions;
- by prohibiting misleading literature, advertising, and solicitation from, or representation by educational institutions or their agents;
- by providing for a commission to advise the Mayor and Council of the District of Columbia as to the post-secondary educational needs of the District of Columbia; and
- by providing for a commission to serve as the state-approving agency for veteran benefits.

(Additional ELC functions shall be discussed in 4. below).

Pertinent stakeholders were included in the SEO's study of the function. Having faced setbacks in staffing and resources, the ELC has great difficulty meeting work load demands. Stakeholders commented on the difficulty, but also pointed to possible

efficiency improvements. While the ELC has been neglected in recent years, this study may serve as a first step in focusing attention on ways to rejuvenate the function.

2. Legislation

The basic functions and authorities of the Education Licensure Commission are established by the Education Licensure Commission Act of 1976, D.C. Law 1-10, as amended, which is codified as Title 31, Chapter 16 of the D.C. Code (1981 ed.). The Commission administers this law, as well as a 1901 statute codified as Title 29, Chapter 8 of the D.C. Code. The ELC also establishes the rules and regulations set forth in Title 16 DCMR, Chapter 8: “Institutions of Learning Corporate Filing;” Chapter 20: “Organization and Procedures of the Education Licensure Commission;” Chapter 21: “Degree Granting Institutions;” and Chapter 22: “Post-Secondary Non-Degree Schools.”

The first Code of Laws for the District of Columbia, signed in 1901, served as the legislative origin for DCMR Chapter 18, Subchapter 1 on Institutions of Learning from 1901 to 1929. Chapter 18 provided that “any five or more persons could establish an institution of learning by providing the name of the institution, number of trustees, branch of literature or science to be taught, and the number, rank and designation of professorships.” On March 2, 1929, Congress amended Chapter 18 to require institutions of learning incorporated in the District to seek licensure from the D.C. Board of Education to confer degrees. In 1973, the Board of Education recommended that the licensing authority for degree-granting institutions be placed in an independent licensure commission appointed by the Mayor.

Of additional note, in 1968, Corporation Counsel determined that institutions incorporated by special acts of Congress and Federal City College (now the University of the District of Columbia) would be subject to the licensing provisions contained in D.C. Code §29-415. For this reason, the Education Licensure Commission today does not have statutory authority to regulate institutions incorporated by special acts of Congress, which include the following:

George Washington University
Georgetown University
Catholic University
American University

Howard University
Gallaudet University
Southeastern University
University of the District of Columbia

The law, as amended, by virtue of D.C. Law 1-104, does require the above-mentioned schools to report their enrollment figures annually to the Commission.

The Education Licensure Commission Act of 1976 enables the ELC to function independently under the authority of the Office of the Mayor. This legislation was then amended in March 1988 (D.C. Law 7-217), and again in March 1991 (D.C. Law 8-239). As mentioned, presently the Commission administers D.C. Law 1-104, as amended, along with a 1901 Federal statute codified as Title 29, Chapter 8 of the D.C. Code.

3. History

In the late 1960s and early 1970s, the Department of Consumer and Regulatory Affairs (DCRA) held the contract for the veterans-approval function through an annual grant from the U.S. Department of Veterans Affairs. However, Veterans Affairs subsequently removed administration of the grant from the District government for regulatory non-compliance. Establishment of the Education Licensure Commission regained the veterans' contract, but subsequently lost it in the mid-eighties. Today, the U.S. Department of Veterans Affairs performs veterans-approval activities.

The Educational Licensure Commission Act of 1976 established the Education Licensure Commission (formerly the Educational Institution Licensure Commission) to serve as a consumer protection agency licensing private degree-granting institutions. The City Council of the District of Columbia enhanced ELC's regulatory responsibilities by adding licensure oversight of trade and technical schools in 1988. This responsibility had always been with DCRA, and the intent of shifting this to the Commission was to engender more strict regulation of these entities as educational institutions than as businesses. In 1990, the Council, with Congressional approval, amended the licensure law to strengthen oversight and enforcement. In 1995, without proper legislation to abolish the Commission (an independent agency), all of its responsibilities were placed in the DCRA.

4. Current Status

The Education Licensure Commission is responsible for four primary functions:

- licensing of post-secondary educational institutions offering courses leading to college credit in the District of Columbia and/or incorporated in the District of Columbia;
- licensing non-degree trade and technical schools and their agents operating in the District;
- granting conditional exemptions from licensure to institutions operating traditional "Semester in Washington" type programs; and
- maintaining the student records and issuing transcripts for institutions that have closed.

The licensing and approval functions require intense evaluation of institutions to determine the capability to offer educational programs. Such evaluation includes an assessment of faculty, finances, facility and equipment, instructional program, library, student retention, student records, and a host of other components. Site visits must be conducted to assure that information provided to the ELC is accurate and legitimate. Degree-granting institutions must renew licensure every three years, and non-degree each year. (For a full overview of rules and regulations for licensing procedures and standards

for post-secondary degree-granting institutions, reference 16 DCMR Chapter 21, and for non-degree schools reference 16 DCMR Chapter 22.)

Formal ELC actions are expressed through resolutions adopted in public meetings, as required by law. The five-member Commission takes formal licensing and approval actions at its public sessions, scheduled for every fourth Thursday of the month, except during August recess. The meeting schedule and proposed actions are published in the D.C. Register, and are available for public examination and comment. An example of a proposed action might be determining closure of an ineligible institution.

Staffing and Organizational Structure: Pursuant to the Education Licensure Commission Act of 1976, the ELC functions independently under the authority of the Office of the Mayor. The Mayor appoints five citizen members to the ELC for no more than two consecutive three-year terms, but his office does not oversee the Commission. The DCRA provides investigative assistance to the Commission through two support staff reporting to the Commission's Program Branch of Business and Professional Licensing Administration (BPLA), and legal assistance from DCRA offices of Compliance and Adjudication.

The two DCRA administrative support positions are described below:

Education Program Specialist: DS 11/12

This specialist provides technical and analytical assistance to the ELC in support of licensing of proprietary, post-secondary degree-granting institutions. This includes

- conducting fact-finding research;
- contacting educational institution officials, accrediting associations, state agencies, and U.S. Department of Education representatives, in order to recommend action on applications to the ELC;
- planning and coordinating all aspects of site evaluation visits by independent evaluators; and
- assisting Office of Compliance in preparing case files for enforcement and/or prosecution by the Office of Corporation Counsel.

Compliance Specialist: DS 11/12

This specialist is responsible for activities related to the inspection, evaluation, and licensing of proprietary, post-secondary non-degree trade and technical institutions. This includes

- preparing background data on institutions and investigating complaints filed against non-degree schools;

- evaluating applications and support documents for compliance with statutory and regulatory requirements, as well as educational, certification, and/or accreditation standards; and
- planning and coordinating site evaluation visits.

In 1990, the ELC had a staffing level of eleven, in addition to the five Commission members. The organization consisted of a degree division of two staff, a non-degree division of two staff, a state-approving division of two staff, and an administrative support office with an Administrative Officer and Computer Specialist. The organization had an Executive Director and an Associate Director, but note that the Executive Director also served as Chief of the Degree Division. (The 1990 organization chart appears in Appendix L. The State Approving Agency Division corresponds to management (in 1990) of the veterans-approval function. Names have been removed, but credentials retained to point to the professionalism associated with the function.)

Workload: In the past eight years, the total number of degree and non-degree schools licensed by the Commission has almost doubled. In 1993, 26 licensed degree-granting institutions operated in the District of Columbia, and there were two ELC staff persons assigned to degree institutions. Currently, there are 32 licensed degree-granting institutions, and only one staff person is assigned to this area. Thirty-six non-degree schools are licensed, and only one staff person is assigned to this area. In the 1990s, two ELC staff persons handled non-degree schools. The office also had two directors and several support staff.

The ELC maintains over a million student records from 17 closed schools, and annually issues more than 400 transcripts. These requests have been increasing, and at this time there is no staff person assigned to distribute transcripts on a regular basis. The records are in disarray.

The Education Program Specialist and Compliance Specialist must prepare a monthly summary of their research for the Commission members in time for the public meeting. Such a summary might include review of applications, review of unlicensed activity, a legal issue regarding conflict of interest. A significant amount of work goes into preparation for these meetings.

Unlicensed activity is common in the District of Columbia. Recently, the ELC distributed compliance notices to 22 non-degree institutions operating in the District of Columbia without a license. Washington Saturday College operated for 20 years without a license before being shut down this past year.

Budget Overview: The ELC does not have access to its operating budget. This has contributed to difficulty ordering supplies and completing tasks pertinent to the agency's mission. The ELC budget relies on local funds (in the absence of the veterans-approval function). DCRA's financial office handles a revolving account that corresponds to ELC activity. To date, \$19,095 resides in that account, but \$10,000 must be maintained at all

times. Licensure fees flow through this account, but do not generate significant revenue. Site evaluation fees also flow through this account. Salaries and benefits for the two staff persons are as follows:

<u>Position</u>	<u>Salaries + Benefits</u>
Education Program Specialist (DS-11 Step 5)	\$ 47,486
Compliance Specialist(DS-11 Step 10)	<u>\$ 54,225</u>
Total	\$101,711

It is unclear whether salaries and/or operating expenses are paid from this account. A figure for operating expenses could not be obtained.

Licensure fees:

Type	Initial	Renewal
Degree	\$250	\$250
Non-degree	\$250	\$225

Degree renewals occur every three years. Non-degree renewals occur annually. Penalty for unlicensed activity is a misdemeanor fine of \$500 for every day of infraction.

District of Columbia fees are significantly lower than in most other jurisdictions. These fees should be compared with practice in states of close proximity to determine whether increasing fees is feasible.

Challenges: As previously stated, inadequate staffing inhibits the ELC from effectively meeting its legislated responsibilities. In the rules and regulations, specific duties are assigned to an Executive Director currently missing from the ELC organizational structure. Handling records from closed schools proves difficult because there is no designated staff to distribute transcripts on a regular basis. The ELC does not have a system, or space, for storage of its original licensing records. These should be properly indexed, archived, and filed.

The ELC does not generate adequate revenue through its licensure fees. District of Columbia fees for licensing of private, degree, and non-degree institutions are low when compared to fees charged in other states. Loss of the veterans-approval function also diminishes potential revenue.

Actual licensing laws require legislative amendment. With passage of the District of Columbia Second Omnibus Regulatory Reform Bill, and subsequent emergency legislation adopted in 1999, the law now requires that licenses issued by the ELC be issued as a Class A Educational Services Endorsement, but this requirement conflicts with ELC regulations.

Finally, another major challenge facing the ELC is the potential regulation of distance education. The ELC must decide whether distance education should be regulated and, if so, craft appropriate policy and procedures. Again, ELC's limited resources do not support proper development of policy and procedures for licensure in this area.

B. Description of Practices in Other States

With private, post-secondary institution licensure activity conducted by DCRA, the District of Columbia and California are the only jurisdictions in which this function is not performed by a State Education Office, Board of Regents, or Education Licensure Agency. In other words, no other states place this responsibility with a general regulatory agency. Moreover, the District and California are also the only jurisdictions in which the veterans-approval function is performed by a non-education agency.

The Education Licensure Commission has the opportunity to network with representatives involved in similar licensing activities across the country. PROANDI — Persons Responsible for Oversight Activities of Non-Public Degree-Granting Institutions — is a national network that facilitates an exchange of information regarding licensure of post-secondary institutions. PROANDI developed out of a series of conferences in the 1970s that convened representatives from the Federal government, state government, accrediting bodies, and other organizations related to higher education. The original intent of convening the group focused on discussion of the approval mechanism for becoming a degree-granting institution. As post-secondary education evolves, the role of the state licensing and approval agency takes on increasing significance. Topics such as external degree programs, distance education, "degree-mills," and others are discussed at annual meetings and throughout the year via the network.

The National Association of Student Financial Aid Administrators (NASFA) convenes representatives from colleges, universities, legislative bodies, and licensing agencies to discuss national trends in licensure of private, post-secondary non-degree granting institutions. This organization represents institutions receiving Title IV-A funds. The National Association of State Administrators and Supervisors of Private Schools (NASASPS) facilitates exchange of information among non-degree licensing agencies throughout the country.

Virginia

The State Council of Higher Education for Virginia (SCHEV) is the agency responsible for licensing post-secondary institutions in the state of Virginia. SCHEV is one of 27 higher education coordinating agencies in the nation. The other 26 states, by and large, have regulatory bodies or a single, centralized governance structure. SCHEV has 11 members, who are appointed by the Governor. The Executive Director, appointed by the Council, manages daily operations of the agency and its 44-member professional staff.

SCHEV has 15 primary duties (reference Appendix L for description). Their duties relate to public and private, post-secondary education and far exceed those currently performed by the District of Columbia's Education Licensure Commission. These duties extend to such activities as preparation of the Virginia Plan for Higher Education every two years, approval of enrollment projections by public institutions, visits and study of operations of public institutions, etc.

Section 23-265 describes licensing activity regulating private in-state institutions and out-of-state institutions operating in Virginia that offer at least an associates degree. SCHEV is also responsible for ensuring a basic level quality of non-publicly governed higher education institutions.

New Hampshire

The Postsecondary Education Commission is the state agency responsible for regulating post-secondary educational institutions in the state, establishing criteria for granting degrees and awarding grants, scholarships, and loans to students, acting as the repository of transcripts for New Hampshire educational institutions that have closed, and operating the Veterans State Approving Agency under the authority of the U.S. Department of Veteran Affairs.

The Commission is responsible for evaluating and approving the plans and articles of agreement for the incorporation of any institution of higher education before they can be filed with the New Hampshire Secretary of State. If the institution is incorporated, the Commission evaluates the initial request for degree-granting authority and makes recommendations to the legislature regarding such requests. Once the legislature has authorized an institution to grant degrees, the Commission approves specific degrees. In addition, the Commission conducts periodic re-evaluations of degree-granting authority and is required to conduct a special re-evaluation if an institution is sold, transferred to, or merged with another institution, or if there is substantial change in the governance of the institution.

New Hampshire does not charge a licensing fee for degree schools, but charges \$250 for an initial non-degree school license (similarly low to those of the District of Columbia). In comparison, below is a short list of initial degree and non-degree fees for other selected states:

	Initial	Renewal
Arizona	\$ 800	
Connecticut	\$1500	
Florida	\$5000	\$2500
Georgia	\$ 500	
Maryland	\$ 0	
North Carolina	\$4000	
Virginia	\$ 0	
West Virginia	\$2000	\$ 500

C. Statement of Options

Option One: The Education Licensure Commission retains regulatory responsibility for licensing functions for private, post-secondary institutions, and DCRA retains the administrative support function provided to the ELC.

Discussion: In essence, this is the status quo option. The ELC continues to function as a commission reporting to the Mayor with responsibility for the regulatory functions outlined in this chapter, and DCRA continues to provide administrative support to the ELC.

Advantage:

- Maintains over one million closed school records stored in a Filenet Document Storage Retrieval System maintained by DCRA.

Disadvantages:

- Administering these licensing activities through a general regulatory agency is inconsistent with practice in other states, where the function resides in an agency related to education.
- Inadequate staffing and resources has hampered service delivery and adherence to certain rules and regulations.

Option Two: The Education Licensure Commission retains regulatory responsibility for licensing functions for private, post-secondary institutions, and the administrative support function transfers from DCRA to the SEO, with addition of an Executive Director, Research Analyst, and clerical assistant.

Discussion: The ELC continues to function as a commission reporting to the Mayor with responsibility for the regulatory functions outlined in this chapter. The two existing administrative support functions transfer from DCRA to the SEO.

Advantages:

- Places function in a State Education Office which is consistent with national practice.
- Allows a new agency (the SEO) to address operational shortcomings through business process improvement.
- Handling of post-secondary issues is congruent with the addition of the Tuition Assistance Grant program (TAG) and the Office of Post-secondary Research and Assistance (OPERA) to the State Education Office, effective FY 2002.

Disadvantage:

- Maintains over one million closed school records stored in a DCRA Filenet Document Storage Retrieval System. (Not a strong disadvantage; see rationale below.)

Option Three: The Education Licensure Commission retains regulatory responsibility for licensing private, post-secondary functions, DCRA retains the existing administrative support positions, and the SEO provides an Executive Director (Operational Manager) for the ELC.

Discussion: The distinction between this option and option one (status quo) is the addition of an SEO Executive Director assigned to the legislative duties outlined for this position. This would address many of the operational aspects currently neglected, but would fragment aspects of administrative support, making no one agency accountable for these activities.

Advantages:

- Provides for an operational manager to enhance the effectiveness of the ELC.
- Maintains over one million closed school records stored in a DCRA Filenet Document Storage Retrieval System.

Disadvantages:

- Administering these licensing activities through a general regulatory agency is inconsistent with practice in other states, where the function resides in an agency related to education.
- Fragments aspects of administrative support to the ELC between two agencies that could result in diminished accountability.

D. Recommendation and Rationale

Recommendation

The SEO recommends Option 2: the Education Licensure Commission retains regulatory responsibility for licensing procedures and standards for private, post-secondary, degree and non-degree granting institutions. The State Education Office also recommends the transfer of administrative support from the DCRA to the SEO, with addition of an Executive Director, Research Analyst, and clerical assistant.

The SEO would conduct an assessment of staffing and operations to make accurate recommendations for enhancing resources dedicated to the function. The addition of an

Executive Director (or Operational Manager) position, Research Analyst, and a clerical assistant seems appropriate to handle operations of the ELC and manage records, respectively. Duties of an Executive Director are outlined in the legislation. The SEO would also provide the needed legal counsel. The SEO would also conduct an assessment of licensure fees in other states, and evaluate the feasibility of raising D.C. fees to increase revenue. Another potential source of revenue might be through recall of the veterans-approval function.

Rationale

Stakeholders commented that this function is better aligned with the mission of a State Education Office than a general regulatory agency. The State Education Office has already fielded several calls from the public regarding post-secondary licensure, and this points to the perception that such an agency is more educational in nature. The SEO will begin to administer post-secondary activities in FY 2002 with the assumption of responsibility for the Tuition Assistance Grant (TAG) and the Office of Post-secondary Research and Assistance (OPERA).

Placement in a new agency would focus attention on improving ELC's operations. The SEO would conduct business process and technology assessments before calculating final costs associated with improvement. The DCRA database mentioned should not be considered a significant obstacle to transfer. Collaboration with the Office of the Chief Technology Officer, and any needed contractual activity, should suffice in developing a strategy for sharing that information.

E. Application of Decision Criteria

1. Consistency With the Vision and Mission of the SEO

The SEO was created "to enhance the administrative efficiency of state-level education." Education Licensure Commission activities are commonly state-level education functions. The vision and mission of the SEO continues to be crafted as its functions evolve. As mentioned, post-secondary functions will join the State Education Office effective FY 2002, and the SEO vision and mission will reflect this addition.

2. Effect on the Transferring Agency

If transferred from DCRA to the SEO, such loss occurs at a time when several other functions may also be transferring out of that agency. However, the transfer of the administrative support function should in no way compromise the ability of DCRA to effectively carry out its remaining responsibilities.

3. Effect on the Quality of Educational and Other Services to Children and Adults

The effect on the quality of educational services would be positive. Enhanced service delivery would better protect consumers from possible fraudulent post-secondary institutions, and service students seeking transcripts from attended closed schools.

4. Potential for Duplication of Functions

This transfer would not lend itself to duplication of functions. The administrative support provided to the ELC would transfer in its entirety from DCRA to the SEO. No other D.C. agency is working in this area (aside from the veterans-approval function currently administered by U.S. Veterans Affairs).

5. Effect on Reporting Requirements

This transfer would have no effect on reporting requirements.

6. Potential for Conflict of Interest

No conflict of interest is predicted as a result of the recommended option.

7. Effect on Cost

The effect on costs would result from the SEO identifying and allocating enhanced resources to the function. Increased costs include hiring an Executive Director, a Research Analyst, and a clerical assistant, as well as compensating existing employees for neglected grade increases. Operating expenses need to be assessed, as do technology improvements. The cost of operating expenses should not be significant, but technology improvements may be initially. However, these increases should be dedicated, whether the function is transferred or remains, in an effort to improve services.

F. Transition Plan for Assumption of the Function

1. Authority and Responsibility of Each Party at Each Stage of the Transition

Proper planning is crucial to a successful transition. Planning must occur during the year prior to transfer. If transfer is projected for FY 2003, then planning would occur during FY 2002. The SEO would convene a transition working group with representation of ELC, DCRA, and SEO senior staff to develop a detailed transition plan for addressing issues of legislation budget, operations, and personnel. The SEO would act to convene and facilitate the series of meetings, and coordinate tasks that would result from planning. The SEO would take responsibility for navigating the transition process.

2. Dates and Benchmarks for Assumption of Authority, Responsibility, Budget, and Employees

If the transfer is authorized:

Responsibility	Benchmark Tasks	Date
Legislative Authority	Legislation reviewed and amended to reflect any necessary changes.	Review prior to transfer date. If transfer date is FY 2003, review should occur in FY 2002. Authority transferred for beginning of FY 2003.
Budget Authority	Budget authority should coincide with transfer of legislative authority and operations.	Recommended date beginning of FY 2003 to coincide with operations transfer. FY 2003 budget formulation process should factor this transfer.
Operations	Assessment and preparation for transfer of records and files (as applicable).	Assess and prepare during FY 2002 for the transfer in the beginning of FY 2003.
Personnel	Preparation for transfer of DCRA personnel from DCRA to SEO. Tasks will include re-classification of positions.	Prepare personnel packet for D.C. Personnel in FY 2002 for actions to take effect upon transfer in the beginning of FY 2003.

3. Estimated Cost to the SEO for Assumption and Management of Function and Recommended Source(s) of Revenue

The estimated cost to the SEO for assumption and management of the ELC function entails personal services, non-personal services (TBD), and business process/technology improvement. Projected costs are as follows:

Personal Services

Executive Director	DS 14/15	\$ 80,500
Education Program Specialist	DS-12/13	\$ 57,500*
Compliance Specialist	DS-12/13	\$ 57,500*
Research Analyst	DS- 9	\$ 40,250
Clerical Assistant	DS- 5 /6	\$ 26,450

Salary and Benefits

*These figures are based on a mid-DS-12 rate. These employees have been overdue for grade promotions for quite some time.

Non-personal Services:

(These costs to be determined after conducting an assessment.)

Operating Costs (including supplies, contracts, rent, etc.) TBD

Cost Considerations:

Furniture and Equipment	\$5,000 per employee* (estimate)
Business Process/Technology Improvement	TBD
Space (Space needs and rent associated with an increase in staff. The ELC needs access to a large hearing room.)	TBD

Sources of Revenue:

Actual District of Columbia licensing fees are as follows:

Type	Initial	Renewal
Degree	\$250	\$250
Non-degree	\$250	\$225

Degree renewals occur every three years. Non-degree renewals occur annually. Penalty for unlicensed activity is a misdemeanor fine of \$500 for every day of infraction.

District of Columbia licensing fees are significantly lower than in other jurisdictions (as outlined in B. above.) These fees should be compared with practice in other states -- particularly Maryland and Virginia -- to determine the feasibility of increasing fees, and more innovative ways in which to finance licensing activities should be researched.

4. Factors With Potential for Disrupting Services to Students and Recommended Steps to Prevent Disruption

Transfer of this function has minimal to no potential disruption of services to students.